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**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

DEPT. OF TRANSPORTATION
DOCKETS

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**COMPUTER RESERVATIONS SYSTEM
(CRS) REGULATIONS; STATEMENTS OF
GENERAL POLICY**

Notice of Proposed Rulemaking

Docket OST-97-2881 - 303

Docket OST-97-3014 - 1/6

Docket OST-98-4775 - 1/6

Docket OST-99-5888 - 1/1

**ANSWER OF ORBITZ, L.L.C. TO PETITION FOR EXTENSION
OF DEADLINES FOR SUBMISSION OF COMMENTS AND
FOR EXTENSION OF CRS RULES SUNSET DATE**

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Dated: November 27, 2002

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**COMPUTER RESERVATIONS SYSTEM
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Orbitz opposes the requested extension. The request is not really about an extension of time to facilitate extensive pleading. It is about a desire to preserve the regulatory status quo for as long as possible, to the detriment of consumers, travel agents and airlines. The Department, in conformity with its own efforts to move this rulemaking forward and thereby to put in place CRS Rules that will better serve the public and the interests of competition, should not postpone the public benefits of updating and improving these rules by granting the request.

1. CRS policy and regulation has been the most investigated, litigated and thoroughly pled topic in the history of the Department. The instant dockets, alone, contain thousands of pages of analysis, arguments and facts. Virtually all the issues in the NPRM have been under discussion and commented on repeatedly by the parties since the Department issued its ANPRM in this proceeding over five years ago. As the Petitioners note:

“This proceeding has been a major undertaking, involving copious comments and proposals submitted by interested parties, studies and investigations conducted by the

Department and others regarding the efficacy of the Rules and the impact of the Internet... The record previously amassed in this proceeding is detailed, lengthy and complex...”

(Petition at 4). In short, the issues in this proceeding have been thoroughly studied, debated, and commented on. If ever a regulatory proposal were ready to be moved ahead for comment on a straightforward schedule, this is it.

2. The existing ninety-day procedural schedule is more than adequate. In most courts, it would represent a lifetime. The 180 days, or more, sought by the Petitioners represents several lifetimes. To the limited extent that the NPRM raises new regulatory proposals, the existing record, and the resources of the parties, are more than adequate to address them under the present schedule. If the holidays are a concern – and we note that it is difficult to come up with any 90-day schedule that does not contain holidays – a week or two could be added to the schedule, but not three months or more.

3. It is clear that this petition really is about a desire on the part of Sabre, Galileo, and Amadeus, the three largest CRSs in the world,’ to preserve the existing regulatory status quo for as long as possible. As the Department tentatively has determined in the NPRM, the existing CRS Rules contain provisions (most notably the mandatory participation rule) which have the effect of impeding competition, to the benefit of the very CRS oligopolies that the CRS Rules were intended to discipline. The largest CRSs want to preserve that anti-competitive and perverse effect of the existing rules as long as possible. The Department should assume that the Petition now before it is the first of many efforts by these parties to impede the progress of the rulemaking at every turn.

¹ As measured by number of agency locations worldwide. See 67 Fed. Reg. at 69369.

4. The Department tentatively has found in the NPRM that all of the market power conditions which originally compelled it to create the CRS Rules still exist: the CRSs continue to have market power (67 Fed. Reg. at 69377); the CRSs impose contract terms that deny travel agents competitive choices (67 Fed. Reg. at 69379); CRSs can and do impose unreasonable costs on airlines (67 Fed. Reg. at 69382); and so on. What has changed is that the Internet and other advances in both hardware and software now make it possible in some instances for competition, if freed from regulatory barriers adopted when no such technology existed, to more effectively discipline that market power than regulation alone can. So long as the regulatory status quo remains, the public is denied the benefits of that more effective competition.

5. The Department has undertaken in the NPRM to better foster competition and to better deter anti-competitive behavior. The longer it waits to complete that task, the greater the cost to competition and to the public interest. This proceeding is not being conducted first and foremost for the convenience of the interested parties, but for the public good, and the Department should move forward at a pace designed to achieve that public good as soon as possible.

6. Most revealingly, the Petitioners have sought an early extension of the existing CRS Rules beyond their current sunset date of March 31, 2003, to September 30, 2003. This is the portion of the petition that demonstrates what its real purpose is – to preserve the existing, less effective rules for as long as possible. The Petitioners have not shown why this question needs to be dealt with at this time, why it can be better dealt with now than at a later date, or why a temporary hiatus in the CRS Rules might not be an appropriate way to deal with a problem, if one arises. But they clearly do want the fuel taken out of this rulemaking and know that there is no better way to accomplish that result than to extend the sunset date of the existing rule as soon as possible. The Department should deny this request outright, and, if it becomes necessary,

should consider at a later date what, if anything, should be done about the sunset date in the existing CRS Rules.

Conclusion

Note should be taken of the fact that the existing CRS Rules were originally designed and intended to limit the abuses of market power by the largest CRSs, yet their continuation is now most avidly sought by those very CRSs. Nothing could be a clearer sign that portions of these rules now work to perpetuate that market power, rather than to limit its abuses. It is in that light that the Department should consider the pending petition for delay in changing those rules. The petition – and particularly the fact that the Petitioners are led by the three largest CRSs – is evidence that those rules, in fact, need to be updated and improved as soon as possible, in the interests of competition. The petition therefore should be denied. If any extra time is to be granted, it should be only for the initial comment period, and in ~~an~~ amount far less than that requested. Any other course of action would be unreasonable, because any other course of action unnecessarily would preserve the regulatory status quo at the expense of the public good.

Respectfully submitted,



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Dated: November 27, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November 2002, a copy of the foregoing Answer of Orbitz, L.L.C. was served by first class mail, postage prepaid, or by hand, on the following.



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